

TITLE 760 DEPARTMENT OF INSURANCE

Final Rule LSA Document #06-69

DIGEST

Adds 760 IAC 1-73, regarding professional employer organizations, to provide registration, financial, actuarial, and operational requirements and fees for professional employer organizations and to otherwise implement IC 27-16. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

760 IAC 1-73

SECTION 1. 760 IAC 1-73 IS ADDED TO READ AS FOLLOWS:

Rule 73. Professional Employer Organizations

760 IAC 1-73-1 Definitions

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 27-16

Sec. 1. The definitions set forth in IC 27-16 and the following definitions apply throughout this rule:

(1) "Fully insured" means a health benefit plan for which one hundred percent (100%) of the liability has been assumed by an insurance company or health maintenance organization authorized to conduct business in Indiana. The health benefit plan may include a layer of financial responsibility for claims assumed by the PEO as long as the insurance company or health maintenance organization is responsible for 100% of the PEO's liability in the event of non-payment by the PEO. The covered individual must be entitled to make a claim for payment directly to the insurance company or health maintenance organization. A fully insured plan may have copay or deductible requirements as permitted by law.

(2) "Health benefit plan" means a plan that provides benefits for health care services. The term does not include the following:

(A) Accident only or disability income insurance or a combination thereof.

(B) Credit only insurance

(C) Disability insurance.

(D) Coverage for a specified disease or illness.

(E) Medicare supplement policies.

(F) Long term care coverage.

(G) Workers' compensation insurance.

(H) Hospital indemnity of fixed indemnity insurance.

(I) Reinsurance contract issued on a stop loss, quota share, or similar basis.

(J) Short term major medical contracts.

(K) Liability insurance.

(L) Limited benefit coverage such as dental or vision only.

(3) "Qualified actuary" means an actuary that is a member of the American Academy of Actuaries and a Fellow in the Society of Actuaries.

(Department of Insurance; 760 IAC 1-73-1)

760 IAC 1-73-2 Registration requirements

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 27-16

Sec. 2. (a) A PEO doing business in Indiana must be registered with the department. The PEO shall submit an

application on a form prescribed by the department. The application shall include the following information:

- (1) The name or names under which the applicant conducts business.
- (2) A copy of the applicant's articles of incorporation or other business organization documents.
- (3) The address of:
 - (A) the principal place of business of the applicant; and
 - (B) each office the applicant maintains in Indiana.
- (4) The applicant's taxpayer or employer identification number.
- (5) A list by jurisdiction of each name under which the applicant has operated in the preceding five (5) years, including any:
 - (A) alternative names;
 - (B) names of predecessors; and
 - (C) if known, successor business entities.
- (6) A detailed explanation of any adverse regulatory actions taken by any state or federal regulatory law enforcement or regulatory agency against the applicant. An adverse regulatory action means any:
 - (A) criminal conviction;
 - (B) regulatory fine;
 - (C) cease and desist order;
 - (D) prohibition order; or
 - (E) suspension, probation or revocation of a license or registration.
- (7) A list of each person that, individually or acting in concert with one (1) or more other persons, owns or controls, directly or indirectly, twenty-five percent (25%) or more of the equity interests of the applicant.
- (8) The name and business experience of any individual who:
 - (A) serves as president or chief executive officer; or
 - (B) otherwise has the authority to act as senior executive officer of the applicant.

If the PEO maintains a health benefit plan that is not fully insured, the application shall include NAIC biographical affidavits of any managerial person for the health benefit plan.

- (9) A financial statement reviewed by an independent person for the applicant's most recent fiscal year prepared:
 - (A) in accordance with generally accepted accounting principles; and
 - (B) by an independent certified public accountant licensed to practice in the jurisdiction in which the accountant is located.

A PEO that maintains a health benefit plan that is not fully insured shall submit a financial statement that is audited rather than reviewed.

- (10) A statement of whether the applicant intends to provide health benefits to its employees and whether the health benefits will be fully insured or not fully insured.
 - (A) If the health benefits will be fully insured, the PEO shall provide the following information:
 - (i) The name of the insurance company.
 - (ii) The insurance producer through which the coverage was purchased.
 - (iii) The effective dates of the coverage.
 - (B) If the health benefits will not be fully insured, the applicant must provide proof of compliance with section 7 of this rule.

(11) Verification that the applicant complies with the workers compensation laws of Indiana and a list of its Indiana clients.

(12) Verification that the PEO has a minimum net worth of fifty thousand dollars (\$50,000) or a bond approved by the department with a market value of at least fifty thousand dollars (\$50,000). The bond must be held by a depository designated by the department securing payment by the PEO of all taxes, wages, benefits, or other entitlements due to or with respect to employees in the event the PEO does not make the payment when due. A PEO that maintains a health benefit plan that is not fully insured must have a fidelity bond even if it has a minimum net worth of fifty thousand dollars (\$50,000). The fidelity bond shall cover all persons with responsibility for the health benefit plan covering acts of dishonesty in the greater of the following amounts based upon the expected amounts for the upcoming fiscal year:

- (A) Ten percent (10%) of the premiums and contributions received by the health benefit plan.
- (B) Ten percent (10%) of the claims paid.

(b) The application shall be accompanied by a fee of five hundred dollars (\$500).

(c) If there is a material change to any of the information required by the application, the PEO shall provide updated information to the department within thirty (30) days of the change. A PEO that fails to inform the department of a material change:

(1) is subject to administrative action; and

(2) may be subject to a penalty, probation, suspension, or revocation of the PEO's registration.

(Department of Insurance; 760 IAC 1-73-2)

760 IAC 1-73-3 Review of application

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 4-21.5; IC 27-16

Sec. 3. (a) The department shall review the application within ninety (90) days of submission.

(b) The department can deny a registration if the applicant fails to meet the standards of this rule or IC 27-16.

(1) A denial shall:

(A) be in writing;

(B) state the reasons supporting the denial; and

(C) provide the applicant with an opportunity to request a hearing.

(2) A request for a hearing shall be made within sixty (60) days of the written denial.

(3) The hearing and subsequent final order is subject to the Administrative Orders and Procedures Act, IC 4-21.5.

(Department of Insurance; 760 IAC 1-73-3)

760 IAC 1-73-4 Limited registration for foreign PEO

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 27-16

Sec. 4. (a) A PEO that is domiciled in a state other than Indiana shall submit the application required under section 2 of this rule. The department will identify the portions of the application that are not required to be completed for a limited registration.

(b) If the PEO provides documentation of all of the following, the application shall be approved:

(1) It is licensed or registered in another state that has a licensure or registration requirement that is substantially similar to or more restrictive than IC 27-16.

(2) It is in good standing in that state.

(3) It does not maintain an office or directly solicit clients located or domiciled in Indiana.

(4) It does not have more than fifty (50) employees employed or domiciled in Indiana.

(5) Payment of a registration fee of two hundred fifty dollars (\$250).

A foreign PEO that cannot document these factors is subject to the same review standards as a PEO domiciled in Indiana. *(Department of Insurance; 760 IAC 1-73-4)*

760 IAC 1-73-5 Independent certification

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 27-16

Sec. 5. (a) Under IC 27-16-4-7, the department shall approve a PEO's registration in lieu of the requirements of sections 2 and 4 of this rule if a certification of the PEO acceptable to the commissioner is provided to the department. The certification must be from an independent national organization that has been approved by the department. To be approved by the department, the organization shall:

(1) have an established program for the accreditation or certification of PEOs based on requirements equal to or greater than the requirements of IC 27-16 and this rule;

(2) be willing to provide a level of financial assurance acceptable to the commissioner; and

(3) agree to provide the department with:

(A) a letter from each PEO requesting registration under IC 27-16-4-7, along with such information as

the department shall require to process the request;

(B) an affidavit confirming the certification or accreditation of each PEO and provide written notice within two (2) business days of any termination or default of such certification or accreditation; and

(C) on-line access to, or provide a copy within five (5) business days of a request for, any information used as a basis for certification or accreditation of a PEO that has elected to use these procedures.

(b) The commissioner shall maintain a list of independent national organizations that have been approved for the purpose of certifying a PEO's application for registration.

(c) If an independent national organization no longer meets the requirements of subsection (a), the department shall conduct a detailed review of all information provided by the independent national organization on behalf of each PEO that was registered based upon that organization's certification or accreditation. The department will notify the PEO in writing of any deficiencies. The PEO shall have sixty (60) days to correct the stated deficiencies.

(d) A registration fee of two hundred fifty dollars (\$250) shall be required for each PEO seeking registration under IC 27-16-4-7. (*Department of Insurance; 760 IAC 1-73-5*)

760 IAC 1-73-6 Renewal of registration

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 27-16

Sec. 6. (a) A registration under section 2, 4, or 5 of this rule is valid for one (1) year.

(b) A PEO shall complete a renewal application on a form prescribed by the department. The registration shall:

(1) identify any change in the information provided with the PEO's initial registration; and

(2) include an update of the PEO's list of Indiana clients.

For a PEO registered under section 5 of this rule, the renewal request and any updated information may be provided by the approved independent national organization that provided the information for the initial registration.

(c) The renewal application shall be accompanied by a renewal fee in the amount of two hundred fifty dollars (\$250) for any type of registration.

(d) If the PEO maintains a health benefit plan that is not fully insured, it shall provide audited financial statements for the health benefit plan trust account with its renewal application. For a PEO registered under section 5 of this rule, the audited financial statements for any health benefit plan trust account may be provided by the approved independent national organization that provided information for the initial registration.

(e) The renewal application with supporting documentation is due one hundred eighty (180) days after the close of the PEO's fiscal year. A late fee of two hundred fifty dollars (\$250) will be assessed to any PEO that does not timely submit the renewal application and supporting documentation. (*Department of Insurance; 760 IAC 1-73-6*)

760 IAC 1-73-7 Health benefit plan

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 27-1-3.1; IC 27-1-25; IC 27-4-1; IC 27-16

Sec. 7. (a) If a PEO offers to its employees a health benefit plan that is not fully insured, the PEO must comply with the following:

(1) The health benefit plan shall have stop loss coverage with an insurer authorized to do business in Indiana. The aggregate retention by the health benefit plan may not exceed one hundred twenty-five percent (125%) of expected claims. The health benefit plan may not use the identity of the stop loss insurer in its marketing information.

(2) Funds held by the PEO for the health benefit plan must be held in a segregated trust account and may be used only for claims and administrative expenses of the health benefit plan.

(A) The segregated trust account shall:

(i) hold reserves consistent with the actuarial opinion; and

(ii) have a minimum balance of one hundred thousand dollars (\$100,000).
(B) The segregated trust account shall hold its funds in the form of:

- (i) cash;
- (ii) irrevocable letter of credit; or
- (iii) U.S. government investments.

(3) The health benefit plan shall place funds into the segregated trust account sufficient to fund one hundred percent (100%) of the aggregate retention plus all other costs of the health benefit plan.

(4) The health benefit plan shall:

(A) be operated in accordance with sound actuarial principles; and

(B) have an annual actuarial opinion from a qualified actuary.

(5) The PEO shall have a written plan acceptable to the department for handling claims. The plan shall include the services of an administrator licensed under IC 27-1-25.

(6) No person charged with responsibility of handling funds may have been convicted at any time of a crime involving moral turpitude or dishonesty unless the commissioner specifically, in writing, permits the person to be involved with the health benefit plan.

(7) The health benefit plan may only provide health benefits to employees and their dependents. The health benefit plan may not discriminate between persons based upon health status in eligibility or terms of coverage.

(8) The PEO shall have a written plan acceptable to the commissioner for the payment of claims in the event of a voluntary dissolution or insolvency.

(9) The PEO and its health benefit plan must comply with the Health Insurance Portability and Accountability Act of 1996, as well as any other applicable federal and state laws. The health benefit plan is subject to IC 27-4-1 regarding unfair claims settlement practices and penalties for violations.

(b) The PEO and its health benefit plan if the health benefit plan is not fully insured are subject to examination by the department every three (3) years or as may be determined necessary by the commissioner. The:

(1) department shall have the powers granted; and

(2) examination shall be governed;

by the provisions of IC 27-1-3.1. All expenses of an examination shall be borne by the PEO.

(c) Every application, summary plan description, and evidence of coverage form issued by a health benefit plan that is not fully insured shall contain the following notice on the front page in not less than 12-point type: "Your coverage is through a self-insured PEO. It is not fully insured. Your coverage is subject to the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. 10001 et seq.). It may not be subject to all of the insurance laws and regulations of Indiana. State insurance guaranty funds are not available for self-insured plans." (*Department of Insurance; 760 IAC 1-73-7*)

760 IAC 1-73-8 Fees and penalties

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 27-1-3-28; IC 27-16

Sec. 8. (a) All fees required by this rule are nonrefundable.

(b) All fees and penalties collected under this rule shall be deposited into the department of insurance dedicated fund created under IC 27-1-3-28. (*Department of Insurance; 760 IAC 1-73-8*)

760 IAC 1-73-9 List of registered PEOs

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 27-16

Sec. 9. The department will post on its Web site a current list of registered PEOs. (*Department of Insurance; 760 IAC 1-73-9*)

760 IAC 1-73-10 Confidential information

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 5-14-3-4; IC 27-16

Sec. 10. The department may share information, including confidential information, with another state agency as allowed by IC 5-14-3-4. (Department of Insurance; 760 IAC 1-73-10)

760 IAC 1-73-11 Severability

Authority: IC 27-16-4-7; IC 27-16-5-4; IC 27-16-5-6; IC 27-16-8-4

Affected: IC 27-16

Sec. 11. If any section or portion of a section of this rule or its applicability to any person or circumstance is held invalid by a court, the remainder of the rule or the applicability of the provision to other persons or circumstances shall not be affected. (Department of Insurance; 760 IAC 1-73-11)